

1 **ORGANIC FOODS PRODUCTION ACT OF 1990**
2 **AS AMENDED**

3 Public Law 101-624, Title XXI, Nov. 28, 1990;
4 Public Law 102-237, Title X, Dec. 13, 1991;
5 Public Law 105-185, Title VI, June 25, 1998
6

7 **SEC. 2101. SHORT TITLE.**

7 USC 6501
note.

8 This title may be cited as the "Organic Foods Production Act of 1990".
9

10 **SEC. 2102. PURPOSES.**

7 USC 6501.

11 It is the purpose of this title

12 (1) to establish national standards governing the marketing of
13 certain agricultural products as organically produced products;

14 (2) to assure consumers that organically produced products
15 meet a consistent standard; and

16 (3) to facilitate interstate commerce in fresh and processed
17 food that is organically produced.
18

19 **SEC. 2103. DEFINITIONS.**

7 USC 6502.

20 As used in this title:

21 (1) **Agricultural product.** The term "agricultural product"
22 means any agricultural commodity or product, whether raw or
23 processed, including any commodity or product derived from
24 livestock that is marketed in the United States for human or

1 livestock consumption.

2 (2) **Botanical pesticides.** The term "botanical pesticides"
3 means natural pesticides derived from plants.

4 (3) **Certifying agent.** The term "certifying agent" means the
5 chief executive officer of a State or, in the case of a State that
6 provides for the Statewide election of an official to be responsible
7 solely for the administration of the agricultural operations of a
8 State, such official, and any person (including private entities)
9 who is accredited by the Secretary as a certifying agent for the
10 purpose of certifying a farm or handling operation as a certified
11 organic farm or handling operation in accordance with this title.

12 (4) **Certified organic farm.** The term "certified organic
13 farm" means a farm, or portion of a farm, or site where agricultural
14 products or livestock are produced, that is certified by the
15 certifying agent under this title as utilizing a system of organic
16 farming as described by this title.

17 (5) **Certified organic handling operation.** The term
18 "certified organic handling operation" means any operation, or
19 portion of any handling operation, that is certified by the certifying
20 agent under this title as utilizing a system of organic handling as
21 described under this title.

22 (6) **Crop year.** The term "crop year" means the normal

1 growing season for a crop as determined by the Secretary.

2 (7) **Governing state official.** The term "governing State
3 official" means the chief executive official of a State, or in the
4 case of a State that provides for the Statewide election of an
5 official to be responsible solely for the administration of the
6 agricultural operations of the State, such official, who administers
7 an organic certification program under this title.

8 (8) **Handle.** The term "handle" means to sell, process or
9 package agricultural products.

10 (9) **Handler.** The term "handler" means any person engaged
11 in the business of handling agricultural products, except such term
12 shall not include final retailers of agricultural products that do not
13 process agricultural products.

14 (10) **Handling operation.** The term "handling operation"
15 means any operation or portion of an operation (except final
16 retailers of agricultural products that do not process agricultural
17 products) that

18 (A) receives or otherwise acquires agricultural products;

19 and

20 (B) processes, packages or stores such products.

21 (11) **Livestock.** The term "livestock" means any cattle,
22 sheep, goats, swine, poultry, equine animals used for food or in the

1 production of food, fish used for food, wild or domesticated game,
2 or other nonplant life.

3 (12) **National List.** The term "National List" means a list of
4 approved and prohibited substances as provided for in section
5 2118.

6 (13) **Organic plan.** The term "organic plan" means a plan of
7 management of an organic farming or handling operation that has
8 been agreed to by the producer or handler and the certifying agent
9 and that includes written plans concerning all aspects of
10 agricultural production or handling described in this title including
11 crop rotation and other practices as required under this title.

12 (14) **Organically produced.** The term "organically
13 produced" means an agricultural product that is produced and
14 handled in accordance with this title.

15 (15) **Person.** The term "person" means an individual, group
16 of individuals, corporation, association, cooperative, or other
17 entity.

18 (16) **Pesticide.** The term "pesticide" means any substance
19 which alone, in chemical combination, or in any formulation with
20 one or more substances, is defined as a pesticide in the Federal
21 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

22 (17) **Processing.** The term "processing" means cooking,

1 baking, heating, drying, mixing, grinding, churning, separating,
2 extracting, cutting, fermenting, eviscerating, preserving,
3 dehydrating, freezing, or otherwise manufacturing, and includes
4 the packaging, canning, jarring, or otherwise enclosing food in a
5 container.

6 (18) **Producer.** The term "producer" means a person who
7 engages in the business of growing or producing food or feed.

8 (19) **Secretary.** The term "Secretary" means the Secretary of
9 Agriculture.

10 (20) **State organic certification program.** The term "State
11 organic certification program" means a program that meets the
12 requirements of section 2107, is approved by the Secretary, and
13 that is designed to ensure that a product that is sold or labeled as
14 "organically produced" under this title is produced and handled
15 using organic methods.

16 (21) **Synthetic.** The term "synthetic" means a substance that
17 is formulated or manufactured by a chemical process or by a
18 process that chemically changes a substance extracted from
19 naturally occurring plant, animal, or mineral sources, except that
20 such term shall not apply to substances created by naturally
21 occurring biological processes.

1 **Sec. 2104. NATIONAL ORGANIC PRODUCTION PROGRAM.** 7 USC 6503.

2 (a) **In General.** The Secretary shall establish an organic certification
3 program for producers and handlers of agricultural products that have
4 been produced using organic methods as provided for in this title.

5 (b) **State Program.** In establishing the program under subsection (a),
6 the Secretary shall permit each State to implement a State organic
7 certification program for producers and handlers of agricultural products
8 that have been produced using organic methods as provided for in this
9 title.

10 (c) **Consultation.** In developing the program under subsection (a),
11 and the National List under section 2118, the Secretary shall consult with
12 the National Organic Standards Board established under section 2119.

13 (d) **Certification.** The Secretary shall implement the program
14 established under subsection (a) through certifying agents. Such
15 certifying agents may certify a farm or handling operation that meets the
16 requirements of this title and the requirements of the organic certification
17 program of the State (if applicable) as an organically certified farm or
18 handling operation.

19
20 **Sec. 2105. NATIONAL STANDARDS FOR ORGANIC** 7 USC 6504.
21 **PRODUCTION.**

22 To be sold or labeled as an organically produced agricultural product

1 under this title, an agricultural product shall

2 (1) have been produced and handled without the use of
3 synthetic chemicals, except as otherwise provided in this title;

4 (2) except as otherwise provided in this title and excluding
5 livestock, not be produced on land to which any prohibited
6 substances, including synthetic chemicals, have been applied
7 during the 3 years immediately preceding the harvest of the
8 agricultural products; and

9 (3) be produced and handled in compliance with an organic
10 plan agreed to by the producer and handler of such product and the
11 certifying agent.

12

13 **Sec. 2106. COMPLIANCE REQUIREMENTS.**

7 USC 6505.

14 **(a) Domestic Products.**

15 (1) **In general.** On or after October 1, 1993

16 (A) a person may sell or label an agricultural product as
17 organically produced only if such product is produced and
18 handled in accordance with this title; and

19 (B) no person may affix a label to, or provide other
20 market information concerning, an agricultural product if
21 such label or information implies, directly or indirectly, that
22 such product is produced and handled using organic methods,

1 except in accordance with this title.

2 (2) **USDA standards and seal.** A label affixed, or other
3 market information provided, in accordance with paragraph (1)
4 may indicate that the agricultural product meets Department of
5 Agriculture standards for organic production and may incorporate
6 the Department of Agriculture seal.

7 (b) **Imported Products.** Imported agricultural products may be sold
8 or labeled as organically produced if the Secretary determines that such
9 products have been produced and handled under an organic certification
10 program that provides safeguards and guidelines governing the production
11 and handling of such products that are at least equivalent to the
12 requirements of this title.

13 (c) **Exemptions for Processed Food.** Subsection (a) shall not apply
14 to agricultural products that

15 (1) contain at least 50 percent organically produced
16 ingredients by weight, excluding water and salt, to the extent that
17 the Secretary, in consultation with the National Organic Standards
18 Board and the Secretary of Health and Human Services, has
19 determined to permit the word "organic" to be used on the
20 principal display panel of such products only for the purpose of
21 describing the organically produced ingredients; or

22 (2) contain less than 50 percent organically produced

1 ingredients by weight, excluding water and salt, to the extent that
2 the Secretary, in consultation with the National Organic Standards
3 Board and the Secretary of Health and Human Services, has
4 determined to permit the word "organic" to appear on the
5 ingredient listing panel to describe those ingredients that are
6 organically produced in accordance with this title.

7 (d) **Small Farmer Exemption.** Subsection (a)(1) shall not apply to
8 persons who sell no more than \$5,000 annually in value of agricultural
9 products.

10
11 **Sec. 2107. GENERAL REQUIREMENTS.**

7 USC 6506.

12 (a) **In General.** A program established under this title shall

13 (1) provide that an agricultural product to be sold or labeled
14 as organically produced must

15 (A) be produced only on certified organic farms and
16 handled only through certified organic handling operations in
17 accordance with this title; and

18 (B) be produced and handled in accordance with such
19 program;

20 (2) require that producers and handlers desiring to participate
21 under such program establish an organic plan under section 2114;

22 (3) provide for procedures that allow producers and handlers

1 to appeal an adverse administrative determination under this title;

2 (4) require each certified organic farm or each certified
3 organic handling operation to certify to the Secretary, the
4 governing State official (if applicable), and the certifying agent on
5 an annual basis, that such farm or handler has not produced or
6 handled any agricultural product sold or labeled as organically
7 produced except in accordance with this title;

8 (5) provide for annual on-site inspection by the certifying
9 agent of each farm and handling operation that has been certified
10 under this title;

11 (6) require periodic residue testing by certifying agents of
12 agricultural products that have been produced on certified organic
13 farms and handled through certified organic handling operations
14 to determine whether such products contain any pesticide or other
15 nonorganic residue or natural toxicants and to require certifying
16 agents, to the extent that such agents are aware of a violation of
17 applicable laws relating to food safety, to report such violation to
18 the appropriate health agencies;

19 (7) provide for appropriate and adequate enforcement
20 procedures, as determined by the Secretary to be necessary and
21 consistent with this title;

22 (8) protect against conflict-of-interest as specified under

1 section 2116(h);

2 (9) provide for public access to certification documents and
3 laboratory analyses that pertain to certification;

4 (10) provide for the collection of reasonable fees from
5 producers, certifying agents and handlers who participate in such
6 program; and

7 (11) require such other terms and conditions as may be
8 determined by the Secretary to be necessary.

9 (b) **Discretionary Requirements.** An organic certification program
10 established under this title may

11 (1) provide for the certification of an entire farm or handling
12 operation or specific fields of a farm or parts of a handling
13 operation if

14 (A) in the case of a farm or field, the area to be certified
15 has distinct, defined boundaries and buffer zones separating
16 the land being operated through the use of organic methods
17 from land that is not being operated through the use of such
18 methods;

19 (B) the operators of such farm or handling operation
20 maintain records of all organic operations separate from
21 records relating to other operations and make such records
22 available at all times for inspection by the Secretary, the

1 certifying agent, and the governing State official; and

2 (C) appropriate physical facilities, machinery, and
3 management practices are established to prevent the
4 possibility of a mixing of organic and nonorganic products or
5 a penetration of prohibited chemicals or other substances on
6 the certified area; and

7 (2) provide for reasonable exemptions from specific
8 requirements of this title (except the provisions of section 2112)
9 with respect to agricultural products produced on certified organic
10 farms if such farms are subject to a Federal or State emergency
11 pest or disease treatment program.

12 (c) **State Program.** A State organic certification program approved
13 under this title may contain additional guidelines governing the production
14 or handling of products sold or labeled as organically produced in such
15 State as required in section 2108.

16 (d) **Availability of fees.**

17 (1) **Account.** Fees collected under subsection (a)(10) of this
18 title (including late payment penalties and interest earned from
19 investment of the fees) shall be credited to the account that incurs
20 the cost of the services provided under this title.

21 (2) **Use.** The collected fees shall be available to the
22 Secretary, without further appropriation or fiscal-year limitation,

1 to pay the expenses of the Secretary incurred in providing
2 accreditation services under this title.
3

4 **Sec. 2108. STATE ORGANIC CERTIFICATION PROGRAM.** 7 USC 6507.

5 (a) **In General.** The governing State official may prepare and submit
6 a plan for the establishment of a State organic certification program to the
7 Secretary for approval. A State organic certification program must meet
8 the requirements of this title to be approved by the Secretary.

9 (b) **Additional Requirements.**

10 (1) **Authority.** A State organic certification program
11 established under subsection (a) may contain more restrictive
12 requirements governing the organic certification of farms and
13 handling operations and the production and handling of
14 agricultural products that are to be sold or labeled as organically
15 produced under this title than are contained in the program
16 established by the Secretary.

17 (2) **Content.** Any additional requirements established under
18 paragraph (1) shall

19 (A) further the purposes of this title;

20 (B) not be inconsistent with this title;

21 (C) not be discriminatory towards agricultural
22 commodities organically produced in other States in

1 accordance with this title; and

2 (D) not become effective until approved by the Secretary.

3 **(c) Review and Other Determinations.**

4 (1) **Subsequent review.** The Secretary shall review State
5 organic certification programs not less than once during each 5-
6 year period following the date of the approval of such programs.

7 (2) **Changes in program.** The governing State official, prior
8 to implementing any substantive change to programs approved
9 under this subsection, shall submit such change to the Secretary
10 for approval.

11 (3) **Time for determination.** The Secretary shall make a
12 determination concerning any plan, proposed change to a program,
13 or a review of a program not later than 6 months after receipt of
14 such plan, such proposed change, or the initiation of such review.

15
16 **Sec. 2109. PROHIBITED CROP PRODUCTION PRACTICES AND 7 USC 6508.**
17 **MATERIALS.**

18 (a) **Seed, Seedlings and Planting Practices.** For a farm to be
19 certified under this title, producers on such farm shall not apply materials
20 to, or engage in practices on, seeds or seedlings that are contrary to, or
21 inconsistent with, the applicable organic certification program.

22 (b) **Soil Amendments.** For a farm to be certified under this title,

1 producers on such farm shall not

2 (1) use any fertilizers containing synthetic ingredients or any
3 commercially blended fertilizers containing materials prohibited
4 under this title or under the applicable State organic certification
5 program; or

6 (2) use as a source of nitrogen: phosphorous, lime, potash, or
7 any materials that are inconsistent with the applicable organic
8 certification program.

9 (c) **Crop Management.** For a farm to be certified under this title,
10 producers on such farm shall not

11 (1) use natural poisons such as arsenic or lead salts that have
12 long-term effects and persist in the environment, as determined by
13 the applicable governing State official or the Secretary;

14 (2) use plastic mulches, unless such mulches are removed at
15 the end of each growing or harvest season; or

16 (3) use transplants that are treated with any synthetic or
17 prohibited material.

18

19 **Sec. 2110. ANIMAL PRODUCTION PRACTICES AND 7 USC 6509.**
20 **MATERIALS.**

21 (a) **In General.** Any livestock that is to be slaughtered and sold or
22 labeled as organically produced shall be raised in accordance with this

1 title.

2 (b) **Breeder Stock.** Breeder stock may be purchased from any source
3 if such stock is not in the last third of gestation.

4 (c) **Practices.** For a farm to be certified under this title as an organic
5 farm with respect to the livestock produced by such farm, producers on
6 such farm

7 (1) shall feed such livestock organically produced feed that
8 meets the requirements of this title;

9 (2) shall not use the following feed

10 (A) plastic pellets for roughage;

11 (B) manure refeeding; or

12 (C) feed formulas containing urea; and

13 (3) shall not use growth promoters and hormones on such
14 livestock, whether implanted, ingested, or injected, including
15 antibiotics and synthetic trace elements used to stimulate growth
16 or production of such livestock.

17 (d) **Health Care.**

18 (1) **Prohibited practices.** For a farm to be certified under
19 this title as an organic farm with respect to the livestock produced
20 by such farm, producers on such farm shall not

21 (A) use subtherapeutic doses of antibiotics;

22 (B) use synthetic internal parasiticides on a routine basis; or

1 (C) administer medication, other than vaccinations, in the
2 absence of illness.

3 (2) **Standards.** The National Organic Standards Board shall
4 recommend to the Secretary standards in addition to those in
5 paragraph (1) for the care of livestock to ensure that such livestock
6 is organically produced.

7 **(e) Additional Guidelines.**

8 (1) **Poultry.** With the exception of day old poultry, all
9 poultry from which meat or eggs will be sold or labeled as
10 organically produced shall be raised and handled in accordance
11 with this title prior to and during the period in which such meat or
12 eggs are sold.

13 (2) **Dairy livestock.** A dairy animal from which milk or milk
14 products will be sold or labeled as organically produced shall be
15 raised and handled in accordance with this title for not less than
16 the 12-month period immediately prior to the sale of such milk
17 and milk products.

18 **(f) Livestock Identification.**

19 (1) **In general.** For a farm to be certified under this title as Records.
20 an organic farm with respect to the livestock produced by such
21 farm, producers on such farm shall keep adequate records and
22 maintain a detailed, verifiable audit trail so that each animal (or in

1 the case of poultry, each flock) can be traced back to such farm.

2 (2) **Records.** In order to carry out paragraph (1), each
3 producer shall keep accurate records on each animal (or in the case
4 of poultry, each flock) including

5 (A) amounts and sources of all medications administered;

6 and

7 (B) all feeds and feed supplements bought and fed.

8 (g) **Notice and Public Comment.** The Secretary shall hold public Regulations.
9 hearings and shall develop detailed regulations, with notice and public
10 comment, to guide the implementation of the standards for livestock
11 products provided under this section.

12

13 **Sec. 2111. HANDLING.**

7 USC 6510.

14 (a) **In General.** For a handling operation to be certified under this
15 title, each person on such handling operation shall not, with respect to any
16 agricultural product covered by this title

17 (1) add any synthetic ingredient during the processing or any
18 postharvest handling of the product;

19 (2) add any ingredient known to contain levels of nitrates,
20 heavy metals, or toxic residues in excess of those permitted by the
21 applicable organic certification program;

22 (3) add any sulfites, nitrates, or nitrites;

1 (4) add any ingredients that are not organically produced in
2 accordance with this title and the applicable organic certification
3 program, unless such ingredients are included on the National List
4 and represent not more than 5 percent of the weight of the total
5 finished product (excluding salt and water);

6 (5) use any packaging materials, storage containers or bins
7 that contain synthetic fungicides, preservatives, or fumigants;

8 (6) use any bag or container that had previously been in
9 contact with any substance in such a manner as to compromise the
10 organic quality of such product; or

11 (7) use, in such product water that does not meet all Safe
12 Drinking Water Act requirements.

13 (b) **Meat.** For a farm or handling operation to be organically certified
14 under this title, producers on such farm or persons on such handling
15 operation shall ensure that organically produced meat does not come in
16 contact with nonorganically produced meat.

17
18 **Sec. 2112. ADDITIONAL GUIDELINES.**

7 USC 6511.

19 (a) **In General.** The Secretary, the applicable governing State official,
20 and the certifying agent shall utilize a system of residue testing to test
21 products sold or labeled as organically produced under this title to
22 assist in the enforcement of this title.

1 **(b) Preharvest Testing.** The Secretary, the applicable governing State
2 official, or the certifying agent may require preharvest tissue testing of any
3 crop grown on soil suspected of harboring contaminants.

4 **(c) Compliance Review.**

5 **(1) Inspection.** If the Secretary, the applicable governing
6 State official, or the certifying agent determines that an
7 agricultural product sold or labeled as organically produced under
8 this title contains any detectable pesticide or other non-organic
9 residue or prohibited natural substance the Secretary, the
10 applicable governing State official, or the certifying agent shall
11 conduct an investigation to determine if the organic certification
12 program has been violated, and may require the producer or
13 handler of such product to prove that any prohibited substance was
14 not applied to such product.

15 **(2) Removal of organic label.** If, as determined by the
16 Secretary, the applicable governing State official, or the certifying
17 agent, the investigation conducted under paragraph (1) indicates
18 that the residue is

19 **(A)** the result of intentional application of a prohibited
20 substance; or

21 **(B)** present at levels that are greater than unavoidable
22 residual environmental contamination as prescribed by the

1 Secretary or the applicable governing State official in
2 consultation with the appropriate environmental regulatory
3 agencies;

4 such agricultural product shall not be sold or labeled as organically
5 produced under this title.

6 (d) **Recordkeeping Requirements.** Producers who operate a certified
7 organic farm or handling operation under this title shall maintain records
8 for 5 years concerning the production or handling of agricultural products
9 sold or labeled as organically produced under this title, including

10 (1) a detailed history of substances applied to fields or
11 agricultural products; and

12 (2) the names and addresses of persons who applied such
13 substances, the dates, the rate, and method of application of such
14 substances.

15
16 **Sec. 2113. OTHER PRODUCTION AND HANDLING PRACTICES.** 7 USC 6512.

17 If a production or handling practice is not prohibited or otherwise
18 restricted under this title, such practice shall be permitted unless it is
19 determined that such practice would be inconsistent with the applicable
20 organic certification program.

1 **Sec. 2114. ORGANIC PLAN.**

7 USC 6513.

2 (a) **In General.** A producer or handler seeking certification under this
3 title shall submit an organic plan to the certifying agent and the State
4 organic certification program (if applicable), and such plan shall be
5 reviewed by the certifying agent who shall determine if such plan meets
6 the requirements of the programs.

7 (b) **Crop Production Farm Plan.**

8 (1) **Soil fertility.** An organic plan shall contain provisions
9 designed to foster soil fertility, primarily through the management
10 of the organic content of the soil through proper tillage, crop
11 rotation, and manuring.

12 (2) **Manuring.**

13 (A) **Inclusion in organic plan.** An organic plan shall
14 contain terms and conditions that regulate the application of
15 manure to crops.

16 (B) **Application of manure.** Such organic plan may
17 provide for the application of raw manure only to

18 (i) any green manure crop;

19 (ii) any perennial crop;

20 (iii) any crop not for human consumptions; and

21 (iv) any crop for human consumption, if such crop is
22 harvested after a reasonable period of time determined

1 by the certifying agent to ensure the safety of such crop,
2 after the most recent application of raw manure, but in
3 no event shall such period be less than 60 days after
4 such application.

5 (C) **Contamination by manure.** Such organic plan shall
6 prohibited raw manure from being applied to any crop in a
7 way that significantly contributes to water contamination by
8 nitrates or bacteria.

9 (c) **Livestock Plan.** An organic livestock plan shall contain
10 provisions designed to foster the organic production of livestock
11 consistent with the purposes of this title.

12 (d) **Mixed Crop Livestock Production.** An organic plan may
13 encompass both the crop production and livestock production
14 requirements in subsections (b) and (c) if both activities are conducted by
15 the same producer.

16 (e) **Handling Plan.** An organic handling plan shall contain provisions
17 designed to ensure that agricultural products that are sold or labeled as
18 organically produced are produced and handled in a manner that is
19 consistent with the purposes of this title.

20 (f) **Management of Wild Crops.** An organic plan for the harvesting
21 of wild crops shall

22 (1) designate the area from which the wild crop will be

1 gathered or harvested;

2 (2) include a 3 year history of the management of the area
3 showing that no prohibited substances have been applied;

4 (3) include a plan for the harvesting or gathering of the wild
5 crops assuring that such harvesting or gathering will not be
6 destructive to the environment and will sustain the growth and
7 production of the wild crop; and

8 (4) include provisions that no prohibited substances will be
9 applied by the producer.

10 (g) **Limitation on Content of Plan.** An organic plan shall not include
11 any production or handling practices that are inconsistent with this title.
12

13 **Sec. 2115. ACCREDITATION PROGRAM.**

7 USC 6514.

14 (a) **In General.** The Secretary shall establish and implement a
15 program to accredit a governing State official, and any private person, that
16 meets the requirements of this section as a certifying agent for the purpose
17 of certifying a farm or handling operation as a certified organic farm or
18 handling operation.

19 (b) **Requirements.** To be accredited as a certifying agent under this
20 section, a governing State official or private person shall

21 (1) prepare and submit, to the Secretary, an application for
22 such accreditation;

1 (2) have sufficient expertise in organic farming and handling access
2 techniques as determined by the Secretary; and
3 (3) comply with the requirements of this section and section
4 2116.

5 (c) **Duration of Designation.** An accreditation made under this
6 section shall be for a period of not to exceed 5 years, as determined
7 appropriate by the Secretary, and may be renewed.

8
9 **Sec. 2116. REQUIREMENTS OF CERTIFYING AGENTS.**

10 (a) **Ability to Implement Requirements.** To be accredited as a
11 certifying agent under section 2115, a governing State official or a person 7 USC 6515.
12 shall be able to fully implement the applicable organic certification
13 program established under this title.

14 (b) **Inspectors.** Any certifying agent shall employ a sufficient number
15 of inspectors to implement the applicable organic certification program
16 established under this title, as determined by the Secretary.

17 (c) **Recordkeeping.**

18 (1) **Maintenance of records.** Any certifying agent shall
19 maintain all records concerning its activities under this title for a
20 period of not less than 10 years.

21 (2) **Access for Secretary.** Any certifying agent shall allow
22 representatives of the Secretary and the governing State official

1 to any and all records concerning the certifying agent's activities
2 under this title.

3 (3) **Transference of records.** If any private person that was
4 certified under this title is dissolved or loses its accreditation, all
5 records or copies of records concerning such person's activities
6 under this title shall be transferred to the Secretary and made
7 available to the applicable governing State official.

8 (d) **Agreement.** Any certifying agent shall enter into an agreement
9 with the Secretary under which such agent shall

10 (1) agree to carry out the provisions of this title; and

11 (2) agree to such other terms and conditions as the Secretary
12 determines appropriate.

13 (e) **Private Certifying Agent Agreement.** Any certifying agent that
14 is a private person shall, in addition to the agreement required in
15 subsection (d)

16 (1) agree to hold the Secretary harmless for any failure on the
17 part of the certifying agent to carry out the provisions of this title;
18 and

19 (2) furnish reasonable security, in an amount determined by
20 the Secretary, for the purpose of protecting the rights of
21 participants in the applicable organic certification program
22 established under this title.

1 (f) **Compliance With Program.** Any certifying agent shall fully
2 comply with the terms and conditions of the applicable organic
3 certification program implemented under this title.

4 (g) **Confidentiality.** Except as provided in section 2107(a)(9), any
5 certifying agent shall maintain strict confidentiality with respect to its
6 clients under the applicable organic certification program and may not
7 disclose to third parties (with the exception of the Secretary or the
8 applicable governing State official) any business related information
9 concerning such client obtained while implementing this title.

10 (h) **Conflict of Interest.** Any certifying agent shall not

11 (1) carry out any inspections of any operation in which such
12 certifying agent, or employee of such certifying agent has, or has
13 had, a commercial interest, including the provision of consultancy
14 services;

15 (2) accept payment, gifts, or favors of any kind from the
16 business inspected other than prescribed fees; or

17 (3) provide advice concerning organic practices or techniques
18 for a fee, other than fees established under such program.

19 (i) **Administrator.** A certifying agent that is a private person shall
20 nominate the individual who controls the day-to-day operation of the
21 agent.

22

1 **(j) Loss of Accreditation.**

2 **(1) Noncompliance.** If the Secretary or the governing State
3 official (if applicable) determines that a certifying agent is not
4 properly adhering to the provisions of this title, the Secretary or
5 such governing State official may suspend such certifying agent's
6 accreditation.

7 **(2) Effect on certified operations.** If the accreditation of a
8 certifying agent is suspended under paragraph (1), the Secretary or
9 the governing State official (if applicable) shall promptly
10 determine whether farming or handling operations certified by
11 such certifying agent may retain their organic certification.

12
13 **Sec. 2117. PEER REVIEW OF CERTIFYING AGENTS.**

7 USC 6516.

14 **(a) Peer Review.** In determining whether to approve an application Reports.
15 for accreditation submitted under section 2115, the Secretary shall
16 consider a report concerning such applicant that shall be prepared by a
17 peer review panel established under subsection (b).

18 **(b) Peer Review Panel.** To assist the Secretary in evaluating
19 applications under section 2115, the Secretary may establish a panel of
20 not less than three persons who have expertise in organic farming and
21 handling methods, to evaluate the State governing official or private
22 person that is seeking accreditation as a certifying agent under such

1 section. Not less than two members of such panel shall be persons who
2 are not employees of the Department of Agriculture or of the applicable
3 State government.

4

5 **Sec. 2118. NATIONAL LIST.**

7 USC 6517.

6 (a) **In General.** The Secretary shall establish a National List of
7 approved and prohibited substances that shall be included in the standards
8 for organic production and handling established under this title in order
9 for such products to be sold or labeled as organically produced under this
10 title.

11 (b) **Content of List.** The list established under subsection (a) shall
12 contain an itemization, by specific use or application, of each synthetic
13 substance permitted under subsection (c)(1) or each natural substance
14 prohibited under subsection (c)(2).

15 (c) **Guidelines for Prohibitions or Exemptions.**

16 (1) **Exemption for prohibited substances.** The National
17 List may provide for the use of substances in an organic farming
18 or handling operation that are otherwise prohibited under this title
19 only if

20 (A) the Secretary determines, in consultation with the
21 Secretary of Health and Human Services and the
22 Administrator of the Environmental Protection Agency, that

1 the use of such substances

2 (i) would not be harmful to human health or the
3 environment;

4 (ii) is necessary to the production or handling of the
5 agricultural product because of unavailability of wholly
6 natural substitute products; and

7 (iii) is consistent with organic farming and handling;

8 (B) the substance

9 (i) is used in production and contains an active
10 synthetic ingredient in the following categories: copper
11 and sulfur compounds; toxins derived from bacteria;
12 pheromones, soaps, horticultural oils, fish emulsions,
13 treated seed, vitamins and minerals; livestock
14 parasiticides and medicines and production aids
15 including netting, tree wraps and seals, insect traps,
16 sticky barriers, row covers, and equipment cleansers;

17 (ii) is used in production and contains synthetic inert
18 ingredients that are not classified by the Administrator
19 of the Environmental Protection Agency as inert of
20 toxicological concern; or

21 (iii) is used in handling and is non-synthetic but is
22 not organically produced; and

1 (C) the specific exemption is developed using the
2 procedures described in subsection (d).

3 **(2) Prohibition on the use of specific natural substances.**

4 The National List may prohibit the use of specific natural
5 substances in an organic farming or handling operation that are
6 otherwise allowed under this title only if

7 (A) the Secretary determines, in consultation with the
8 Secretary of Health and Human Services and the
9 Administrator of the Environmental Protection Agency, that
10 the use of such substances

11 (i) would be harmful to human health or the
12 environment; and

13 (ii) is inconsistent with organic farming or handling,
14 and the purposes of this title; and

15 (B) the specific prohibition is developed using the
16 procedures specified in subsection (d).

17 **(d) Procedure for Establishing National List.**

18 (1) **In general.** The National List established by the
19 Secretary shall be based upon a proposed national list or proposed
20 amendments to the National List developed by the National
21 Organic Standards Board.

22 (2) **No additions.** The Secretary may not include exemptions

1 for the use of specific synthetic substances in the National List
2 other than those exemptions contained in the Proposed National
3 List or Proposed Amendments to the National List.

4 (3) **Prohibited substances.** In no instance shall the National
5 List include any substance, the presence of which in food has been
6 prohibited by Federal regulatory action.

7 (4) **Notice and comment.** Before establishing the National Federal
8 List or before making any amendments to the National List, the Register
9 Secretary shall publish the Proposed National List or any Proposed Publication.
10 amendments to the National List in the Federal Register and seek
11 public comment on such proposals. The Secretary shall include in
12 such Notice any changes to such proposed list or amendments
13 recommended by the Secretary.

14 (5) **Publication of National List.** After evaluating all Federal
15 comments received concerning the Proposed National List or Register
16 Proposed Amendments to the National List, the Secretary shall Publication.
17 publish the final National List in the Federal Register, along with
18 a discussion of comments received.

19 (e) **Sunset Provision.** No exemptions or prohibition contained in the
20 National List shall be valid unless the National Organic Standards Board
21 has reviewed such exemption or prohibition as provided in this section
22 within 5 years of such exemption or prohibition being adopted or

1 reviewed and the Secretary has renewed such exemption or prohibition.

2

3 **Sec. 2119. NATIONAL ORGANIC STANDARDS BOARD.**

7 USC 6518.

4 (a) **In General.** The Secretary shall establish a National Organic Establishment.
5 Standards Board (in accordance with the Federal Advisory Committee Act
6 (5 U.S.C. App. 2 et seq.)) (hereafter referred to in this section as the
7 "Board") to assist in the development of standards for substances to be
8 used in organic production and to advise the Secretary on any other
9 aspects of the implementation of this title.

10 (b) **Composition of Board.** The Board shall be composed of 15
11 members, of which

12 (1) four shall be individuals who own or operate an organic
13 farming operation;

14 (2) two shall be individuals who own or operate an organic
15 handling operation;

16 (3) one shall be an individual who owns or operates a retail
17 establishment with significant trade in organic products;

18 (4) three shall be individuals with expertise in areas of
19 environmental protection and resource conservation;

20 (5) three shall be individuals who represent public interest or
21 consumer interest groups;

22 (6) one shall be an individual with expertise in the fields of

1 toxicology, ecology, or biochemistry; and

2 (7) one shall be an individual who is a certifying agent as
3 identified under section 2116.

4 (c) **Appointment.** Not later than 180 days after the date of enactment
5 of this title, the Secretary shall appoint the members of the Board under
6 paragraph (1) through (6) of subsection (b) (and under subsection (b)(7)
7 at an appropriate date after the certification of individuals as certifying
8 agents under section 2116) from nominations received from organic
9 certifying organizations, States, and other interested persons and
10 organizations.

11 (d) **Term.** A member of the Board shall serve for a term of 5 years,
12 except that the Secretary shall appoint the original members of the Board
13 for staggered terms. A member cannot serve consecutive terms unless
14 such member served an original term that was less than 5 years.

15 (e) **Meetings.** The Secretary shall convene a meeting of the Board not
16 later than 60 days after the appointment of its members and shall convene
17 subsequent meetings on a periodic basis.

18 (f) **Compensation and Expenses.** A member of the Board shall serve
19 without compensation. While away from their homes or regular places of
20 business on the business of the Board, members of the Board may be
21 allowed travel expenses, including per diem in lieu of subsistence, as is
22 authorized under section 5703 of title 5, United States Code, for persons

1 employed intermittently in the Government service.

2 (g) **Chairperson.** The Board shall select a Chairperson for the Board.

3 (h) **Quorum.** A majority of the members of the Board shall constitute
4 a quorum for the purpose of conducting business.

5 (i) **Decisive Votes.** Two-thirds of the votes cast at a meeting of the
6 Board at which a quorum is present shall be decisive of any motion.

7 (j) **Other Terms and Conditions.** The Secretary shall authorize the
8 Board to hire a staff director and shall detail staff of the Department of
9 Agriculture or allow for the hiring of staff and may, subject to necessary
10 appropriations, pay necessary expenses incurred by such Board in carrying
11 out the provisions of this title, as determined appropriate by the Secretary.

12 (k) **Responsibilities of the Board.**

13 (1) **In general.** The Board shall provide recommendations
14 to the Secretary regarding the implementation of this title.

15 (2) **National List.** The Board shall develop the proposed
16 National List or proposed amendments to the National List for
17 submission to the Secretary in accordance with section 2118.

18 (3) **Technical advisory panels.** The Board shall convene
19 technical advisory panels to provide scientific evaluation of the
20 materials considered for inclusion in the National List. Such
21 panels may include experts in agronomy, entomology, health
22 sciences and other relevant disciplines.

1 (4) **Special review of botanical pesticides.** The Board shall,
2 prior to the establishment of the National List, review all botanical
3 pesticides used in agricultural production and consider whether
4 any such botanical pesticides should be included in the list of
5 prohibited natural substances.

6 (5) **Product residue testing.** The Board shall advise the
7 Secretary concerning the testing of organically produced
8 agricultural products for residues caused by unavoidable residual
9 environmental contamination.

10 (6) **Emergency spray programs.** The Board shall advise the
11 Secretary concerning rules for exemptions from specific
12 requirements of this title (except the provisions of section 2112)
13 with respect to agricultural products produced on certified organic
14 farms if such farms are subject to a Federal or State emergency
15 pest or disease treatment program.

16 (1) **Requirements.** In establishing the proposed National List or
17 proposed amendments to the National List, the Board shall

18 (1) review available information from the Environmental
19 Protection Agency, the National Institute of Environmental Health
20 Studies, and such other sources as appropriate, concerning the
21 potential for adverse human and environmental effects of
22 substances considered for inclusion in the proposed National List;

1 (2) work with manufacturers of substances considered for
2 inclusion in the proposed National List to obtain a complete list of
3 ingredients and determine whether such substances contain inert
4 materials that are synthetically produced; and

5 (3) submit to the Secretary, along with the proposed National
6 List or any proposed amendments to such list, the results of the
7 Board's evaluation and the evaluation of the technical advisory
8 panel of all substances considered for inclusion in the National
9 List.

10 (m) **Evaluation.** In evaluating substances considered for inclusion in
11 the proposed National List or proposed amendment to the National List,
12 the Board shall consider

13 (1) the potential of such substances for detrimental chemical
14 interactions with other materials used in organic farming systems;

15 (2) the toxicity and mode of action of the substance and of its
16 breakdown products or any contaminants, and their persistence
17 and areas of concentration in the environment;

18 (3) the probability of environmental contamination during
19 manufacture, use, misuse or disposal of such substance;

20 (4) the effect of the substance on human health;

21 (5) the effects of the substance on biological and chemical
22 interactions in the agroecosystem, including the physiological

1 effects of the substance on soil organisms (including the salt index and
2 solubility of the soil), crop and livestock;

3 (6) the alternatives to using the substance in terms of
4 practices or other available materials; and

5 (7) its compatibility with a system of sustainable agriculture.

6 (n) **Petitions.** The Board shall establish procedures under which
7 persons may petition the Board for the purpose of evaluating substances
8 for inclusion on the National List.

9 (o) **Confidentiality.** Any confidential business information obtained
10 by the Board in carrying out this section shall not be released to the
11 public.

12
13 **Sec. 2120. VIOLATIONS OF TITLE.**

7 USC 6519.

14 (a) **Misuse of Label.** Any person who knowingly sells or labels a
15 product as organic, except in accordance with this title, shall be subject to
16 a civil penalty of not more than \$10,000.

17 (b) **False Statement.** Any person who makes a false statement under
18 this title to the Secretary, a governing State official, or a certifying agent
19 shall be subject to the provisions of section 1001 of title 18, United States
20 Code.

21 (c) **Ineligibility.**

22 (1) **In general.** Except as provided in paragraph (2), any

1 person who

2 (A) makes a false Statement;

3 (B) attempts to have a label indicating that an
4 agricultural product is organically produced affixed to such
5 product that such person knows, or should have reason to
6 know, to have been produced or handled in a manner that is
7 not in accordance with this title; or

8 (C) otherwise violates the purposes of the applicable
9 organic certification program as determined by the Secretary;
10 after notice and an opportunity to be heard, shall not be eligible,
11 for a period of 5 years from the date of such occurrence, to receive
12 certification under this title with respect to any farm or handling
13 operation in which such person has an interest.

14 (2) **Waiver.** Notwithstanding paragraph (1), the Secretary
15 may reduce or eliminate the period of ineligibility referred to in
16 such paragraph if the Secretary determines that such modification
17 or waiver is in the best interests of the applicable organic
18 certification program established under this title.

19 (d) **Reporting of Violations.** A certifying agent shall immediately
20 report any violations of this title to the Secretary of the governing State
21 official (if applicable).

22 (e) **Violations by Certifying Agent.** A certifying agent that is a

1 private person that violates the provisions of this title or that falsely or
2 negligently certifies any farming or handling operation that does not meet
3 the terms and conditions of the applicable organic certification program
4 as an organic operation, as determined by the Secretary or the governing
5 State official (if applicable) shall, after notice and an opportunity to be
6 heard

7 (1) lose its accreditation as a certifying agent under this title;

8 and

9 (2) be ineligible to be accredited as a certifying agent under
10 this title for a period of not less than 3 years subsequent to the date
11 of such determination.

12 (f) **Effect of Other Laws.** Nothing in this title shall alter the authority
13 of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 et
14 seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the
15 Egg Products Inspection Act (21 U.S.C. 1031 et seq.) concerning meat,
16 poultry and egg products, nor any of the authorities of the Secretary of
17 Health and Human Services under the Federal Food, Drug and Cosmetic
18 Act (21 U.S.C. 301 et seq.), nor the authority of the Administrator of the
19 Environmental Protection Agency under the Federal Insecticide,
20 Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

1 **Sec. 2121. ADMINISTRATIVE APPEAL.**

7 USC 6520.

2 **(a) Expedited Appeals Procedure.** The Secretary shall establish an
3 expedited administrative appeals procedure under which persons may
4 appeal an action of the Secretary, the applicable governing State official,
5 or a certifying agent under this title that

6 (1) adversely affects such person; or

7 (2) is inconsistent with the organic certification program
8 established under this title.

9 **(b) Appeal of Final Decision.** A final decision of the Secretary under
10 subsection (a) may be appealed to the United States district court for the
11 district in which such person is located.

12
13 **Sec. 2122. ADMINISTRATION.**

7 USC 6521

14 **(a) Regulations.** Not later than 540 days after the date of enactment
15 of this title, the Secretary shall issue proposed regulations to carry out this
16 title.

17 **(b) Assistance to State.**

18 (1) **Technical and other assistance.** The Secretary shall
19 provide technical, administrative, and Extension Service assistance
20 to assist States in the implementation of an organic certification
21 program under this title.

22 (2) **Financial assistance.** The Secretary may provide

1 financial assistance to any State that implements an organic
2 certification program under this title.
3

4 **Sec. 2123. AUTHORIZATION OF APPROPRIATIONS.**

7 USC 6522

5 There are authorized to be appropriated for each fiscal year such sums
6 as may be necessary to carry out this title.
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